Environmental Defenders Office

Submission in response to the Rural Water Use Strategy Position Paper

June 2020

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I. Introduction

1 Tasmanians are lucky to enjoy access to a relatively large proportion of Australia's freshwater resources. With approximately 150,000 km of waterways, 8,800 wetlands and 94,000 water bodies, the proper management of this precious resource is necessarily complex and will be increasingly so as Tasmania's climate changes and existing land uses adapt. As with waterways across Australia, Tasmania's rivers, lakes and wetlands are facing increased pressures resulting in decreased flows, water quality and ecological health.[1] In Tasmania, these pressures arise from population growth in our urban areas, altered flow and usage regimes due to climate change, industrial uses such as hydro and aquaculture, and agricultural pressures from increased irrigation. Management of these pressures requires the holistic and integrated management of both waterways and land use change.

2 When the National Water Initiative (**NWI**) was agreed by the Council of Australian Governments in 2004, it was a clear recognition that that Australia needed to do more to ensure that water is allocated and used to achieve socially, economically and environmentally beneficial outcomes. The NWI recognised the continuing "imperative to increase the productivity and efficiency of Australia's water use, the need to service rural and urban communities, and to ensure the health of river and groundwater systems by establishing clear pathways to return all systems to environmentally sustainable levels of extraction".

3 While the *Water Management Act 1999* (Tas) (**WM Act**) generally provides a sound foundation for the regulation of water in this State, we expect that as a result of its National Water Reform Inquiry, the Productivity Commission will make recommendations about how Tasmania can progress the achievement of the NWI objectives and outcomes, and indeed how the NWI objectives may need improvement to account for the changing pressures on our waterways.

4 Within that context, under its "AgriVision 2050" policy the Tasmanian Government intends to grow the economic output of Tasmania's agricultural sector to $10 billion by 2050. Depending on the figures you use, this represents a four-fold increase in Tasmania's agricultural output. A large proportion of this growth will be focused on high-value, water intensive industries such as dairy farming and aquaculture.[2] The stated aim of the Rural Water Use Strategy is to "underpin the sustainable development of the State's water resources to support an increase in irrigated agriculture…".[3]

5 Environmental Defender's Office Ltd (**EDO**) acknowledges that it is more important than ever to ensure that Tasmania's agricultural sector is both economically and environmentally sustainable. Given the projected growth of agriculture, it is an opportune time to consider

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[1] Argent RM (2017) *Australia State of the Environment 2016: Inland Water, independent report to the Australian Government Minister for the Environment and Energy*, Australian Government Department of the Environment and Energy, Canberra, doi:10.4226/94/58b656cfc28d1 at vii and 26. No state of the environment reports have been prepared for Tasmania since 2009.

[2] see Tasmania's Sustainable Agri-Food Plan 2019 – 2023 accessible at https://dpipwe.tas.gov.au/Documents/Tasmanian%20Sustainable%20Agri-Food%20Plan%202019-23.pdf .

[3] The Tasmanian Government states that the Rural Water Use Strategy will "set the direction for legislative and policy reform in the rural water sector for the next few decades. This will underpin the sustainable development of the State's water resources to support an increase in irrigated agriculture..." accessible at https://dpipwe.tas.gov.au/Documents/Rural%20Water%20Use%20Strategy%20Flyer.pdf

whether Tasmania's current laws and policies are adequately protecting our waterways from adverse impacts on both water flow and water quality arising from agricultural and other rural industries. EDO therefore welcomes the opportunity to comment on the Rural Water Use Strategy Position Paper (**Position Paper**).

6 While EDO is broadly supportive of the majority of the proposals outlined in the Position Paper, we note that some of the proposals, particularly in relation to legislative reform, are lacking in sufficient detail to enable detailed feedback. Furthermore, there are certain rural water management issues that are urgently in need of addressing that are currently not within the scope of the RWUS and therefore have not been addressed in the Position Paper.

7 Our comments in response to each of the Position Paper's four goals and associated proposals are set out in detail below. In summary, our submission addresses the following key themes/generally make the following recommendations:

(a) There is a need for better integration of the relationship between water flow and water quality in the management of Tasmania's waterways

(b) There is a need for both additional monitoring and evaluation of the health (i.e. flow and quality) of Tasmania's freshwater resources

(c) Statutory Water Management Plans (**WMP**) and review processes need to be entrenched, with the rights for community and palawa / Tasmanian Aboriginal involvement guaranteed, and consideration of climate change mandated

(d) There is a need for better transparency and accountability in water allocation decisions, and for a pricing structure that encourages resource efficiency

(e) Emerging large uses of freshwater, such as new energy projects or aquaculture, need to be adequately factored into WMPs, with allocations to be made under the WM Act and in accordance with WMPs

(f) The allocation of water for consumptive use or uses with adverse water quality impacts need to be properly brought within the existing statutory framework and be subject to WMPs.

8 Given the broader NWI review, EDO considers that the Position Paper is just the start of a larger conversation that Tasmania needs to be having about the management of this State's freshwater resources. We look forward to future opportunities to contribute to this conversation.

II. Goal 1 - Sustainable Management of Tasmania's freshwater resources in a changing climate

9 While EDO generally supports the proposals outlined for Goal 1, we provide the following comments in relation to the subheadings under this Goal in the Position Paper.

Valuing our freshwater resources

10 The value of Tasmania's freshwater cannot be understated. Access to clean and plentiful water positively contributes to every aspect of Tasmania's community, economy and environment. While the economic values of water to industries such as agriculture, hydro-electric generation, and aquaculture may be obvious, the social and environmental values are often overlooked. Examples of the social and environmental values of water include its ability to:

(a) provide safe drinking water

(b) be able to be used by people to swim, fish or undertake water sports

(c) provide habitat for native species

(d) provide for social, spiritual, customary and aesthetic uses.

The need to protect and maintain these values underpins the necessity of getting our water provision and management arrangements right.

11 Assigning a price for water is one way of reflecting the value freshwater and ensuring that water users efficiently use the resource. However, fixing a price for water will never be able to truly reflect all the social, cultural or ecological values of our water resources.

12 To ensure that all water values – not just those uses that are assigned a dollar value or with an easily measurable economic impact – are properly accounted for in water management decisions we urge the government to continue to engage in comprehensive community consultation processes in the development of WMPs and water quality objectives for all water catchments in Tasmania, and then actively measure whether those objectives are being achieved. To this end, we suggest the government also consider at developing environmental accounting methods to measure trends in the condition of our waterways and environment more generally.[4]

Understanding our freshwater resources

13 The Position Paper states at 1.2.3 (p17) that the Department has a good understanding of Tasmania's surface water resources although it that notes that some catchments are "reaching full allocation".

14 Taking account of the following issues:

(a) the limited network of surface water monitoring stations;

(b) the take of water under most water allocations under the WM Act is not required to be metered;

[4] See for example, Wentworth Group of Concerned Scientists, 2016. *Accounting for Nature: A scientific method for constructing environmental asset condition accounts,* Wentworth Group of Concerned Scientists, Sydney. Available: https://wentworthgroup.org/2016/12/accounting-for-nature-2016/2016/

(c) the limited understanding of groundwater contributions to surface water flow, and the largely unmonitored take from groundwater sources;

(d) rapidly changing climatic conditions and the potentially outdated climate change modelling relating our freshwater resources;

(e) the lack of WMPs and environmental flow modelling for many of our waterways; and

(f) the lack of any Water Quality Objectives for catchments,

we agree with the stakeholders consulted in the lead up to this Position Paper who questioned whether the Department does have an accurate picture of Tasmania's surface water catchments

15 EDO supports the Position Paper proposal that, as part of the RWUS, a review of Tasmania's surface water monitoring networks should be undertaken. However, we consider that that review ought to:

(a) be comprehensive as opposed to strategic;

(b) consider both whether surface flows as well as surface water quality are being adequately monitored;

(c) consider how to better integrate groundwater monitoring to establish the interplay between groundwater and surface flows;

(d) consider whether flow, water quality and groundwater information is being used to properly ensure water management and planning decisions are informed by both observed and modelled data; and

(e) consider whether the surface water monitoring data is being adequately used to assess the accuracy and refine water allocation models used in water planning and allocation decisions.

16 Another of the proposals in the Position Paper is for the water allocation policy framework to be reviewed to, amongst other things, ensure that it "continues to deliver outcomes in line with the objectives" of the WM Act. Under the NWI, Tasmania agreed to the "periodic independent audit, review and public reporting of the achievement of environmental and other public benefit outcomes and the adequacy of the water provision and management arrangements in achieving those outcomes."[5] Without access to such recent independent or public reports on the achievement of environmental and public benefit outcomes, and the adequacy of WMPs, we question the basis for the statement that current water allocation policy continues to deliver outcomes in line with the objectives, and how the community can share the Department's confidence that WM Act objectives are currently being achieved.

17 The National Water Reform Productivity Commission Inquiry Report No. 87, 19 December 2017 (**PC Report**) emphasised (at pp167 – 168) the need for the states to ensure water planning arrangements are sufficiently ensuring desired benefits, such as sustainable water flows and water quality, are being delivered by each state's water management and planning framework over time. The desired benefits for the water management and planning framework identified under the WM Act - the Resource Management and Planning System objectives - are set out in Schedule 1 of that Act. These objectives include the sustainable

[5] NWI at clause 79(d)

development of natural and physical resources and the maintenance of ecological processes and genetic diversity. “Sustainable development” is defined as

> ...managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –
>
> (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
>
> (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
>
> (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

18 One of the key statutory mechanisms in Tasmania of monitoring and reporting of the effectiveness of the achievement of the Resource Management and Planning System (**RMPS**) objectives, is the State of the Environment (**SoE**) Reports. While there is a statutory obligation to publish these reports every 5 years,[6] regrettably, the last SoE report for Tasmania was published by the Tasmanian Planning Commission some 11 years ago in 2009.

19 Presumably because of the intended primacy of the SoE reports, there are currently no other statutory obligations requiring the government to regularly report against the achievement of the RMPS objectives more broadly. This failing puts us in a difficult position in assessing the adequacy of current water management arrangements in achieving the objectives of the RMPS, critically including whether they are “safeguarding” the “life-supporting capacity of air, water, soil and ecosystems” and maintaining “ecological processes and genetic diversity”. This is particularly important at a time when there is increased demand on water resources as outlined in the introduction to this submission. The pressures also pose serious threats to our ability to stabilise and recover populations of threatened species and communities reliant on health waterways.

20 While the Position Paper has pointed to a range of data relating to surface water flows and quality (with some of that data publicly available and some not), there have been no recent and comprehensive reports that accurately provide a snapshot of our current river health and/or measure trends in that health over time.[7] Furthermore, reviews of statutory WMPs have not been completed and/or have not been publicly reported.[8] Without such information, it is incredibly difficult for both the Department and the community to determine whether the either the WM Act and statutory WMPs are achieving their objectives.

21 EDO therefore recommends that as part of the RWUS, the government commits to:

(a) making surface flows and water quality data publicly available;

(b) groundwater monitoring being resourced and expanded to fill identified “knowledge gaps”;

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[6] *State Policies and Projects Act 1993*, s29.

[7] We note that in 2013 the Tasmanian Government indicated to the National Water Commission that it was intending on reporting against WMP objectives, however those reports (if they exist) have not been publicly released. See National Water Commission 2014, National Water Planning Report Card 2013, NWC, Canberra at p 467. We understand that the Department recently undertook review of the River Health Monitoring Program, however that review and its recommendations have not been publicly released.

[8] The PC Report notes at p171 that WMP reviews are now overdue in Tasmania.

(c) collating data on surface flows and use, groundwater levels and use, and water quality and publicly reporting on the status and trends in river health annually;

(d) resourcing the Department to undertake reviews of all existing WMPs for which a review is due (or overdue as the case may be); and

(e) resourcing the Tasmanian Planning Commission to prepare SoE reports in accordance with statutory requirements.

Water quality and river health

22 We note the proposal in the Position Paper to "continue the River Health Monitoring Program as part of the water management framework." While we are supportive of this proposal, we also recommend that the Rural Water Use Strategy commit to other actions to protect both water quality and river health.

23 The government's policy of promoting increased agricultural production, and particularly dairy farming, should take account of the unintended water quality and river health impacts of such industries.

24 We only need to look "across the ditch" to New Zealand for a clear demonstration of the adverse consequences on water quality and river health arising from these industries.[9] However, now New Zealand is leading the way in taking action to "stop the degradation of waterways and restore them to a healthy state."[10] While there are significant upfront costs relating the New Zealand government's Action For Healthy Waterways policy, the government has calculated that the general benefits to the community in having access to clean and healthy waterways more than outweighs those costs.[11]

25 One action that the Tasmanian government should urgently take to address water quality issues arising under the RWUS is the implementation of all measures under the *State Policy on Water Quality Management 1997* (**SPWQM**).

26 Currently, vital aspects of this policy have not yet been fully implemented. As one example, the Environment Protection Authority Board is yet to identify Water Quality Objectives (**WQO**) for Tasmania's waterways as required under clause 11 of the SPWQM. WQOs are key water quality parameters set for a waterway or catchment which aim to protect or achieve the identified Protected Environmental Values for the waterway (such as its use for drinking water, recreation, stock watering or aquaculture etc). WQOs ought to be factored into decisions under the WM Act as cl. 14.1 of the SPWQM requires:

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[9] New Zealand Ministry for the Environment (2019) *Action for healthy waterways: A discussion document on national direction for our essential freshwater.* Accessed at: https://www.mfe.govt.nz/publications/fresh-water/action-healthy-waterways-discussion-document-national-direction-our

[10] New Zealand Ministry for the Environment (2019) *Action for healthy waterways: A discussion document on national direction for our essential freshwater.* Accessed at: https://www.mfe.govt.nz/publications/fresh-water/action-healthy-waterways-discussion-document-national-direction-our

[11] New Zealand Ministry for Environment (2019) *Draft Regulatory Impact Statement: Essential Freshwater Policy Package for consultation Part II: Detailed Analysis,* accessible at https://www.mfe.govt.nz/sites/default/files/media/Fresh%20water/interim-regulatory-impact-analysis-for-consultation-essential-freshwater-part-2.pdf

> When issuing or reviewing water rights and other licences or permits which allow water abstraction, diversion or the construction of in-stream impoundments, water management authorities must take account of the likely effects of the proposed action on water quality, and whether it will prejudice the achievement of water quality objectives.

We question how the Department can be said to have a good understanding of Tasmania's surface water resources, or indeed be complying with its statutory obligations in the granting of water allocations,[12] preparing and approving water management plans,[13] approvals for the construction of dams or other works within waterways,[14] in the absence of WQOs against which performance can be measured.

27 Many stakeholders consulted in the lead up to the Position Paper raised concerns about the impacts of irrigation, dams and intensified agriculture on water quality. We consider that these concerns are well founded and are backed by science. While the Position Paper states (at p 41) that related catchment management issues such as land use are not within the scope of the RWUS, they are not outside the scope of the WM Act, WMPs or indeed, as outlined below, the SPQWM.

28 The SPWQM requires the government to work with industry to develop best practice guidelines or a code of practice for agriculture to manage water quality impacts.[15] The purpose of these statutory documents is to make clear what farmers should to be doing to ensure that they are not inadvertently causing environmental nuisance or harm (being offences under the *Environmental Management and Pollution Control Act 1994* (Tas)) through impacts on waterways such as increased sedimentation, nutrient and chemical pollution arising such common agricultural practices as stock watering, irrigation or intensive cropping.

29 Given the development of the RWUS in the context of the government's policy to incentivise a considerable increase in State's agricultural output, and the RWUS being a key mechanism to facilitate this outcome, these best practice guidelines are a critical part of that strategy. Not only is this a requirement under the SPWQM,[16] but the setting of best practice guidelines in accordance with the SPWQM is one practical and commonsense way of mitigating the impacts of associated land use practices on catchment water quality, many of which may be otherwise unregulated. Such codes and guidelines would give effect to the RMPS objectives and provide greater certainty for both farmers and the community about how the health our waterways is being protected. These guidelines will be of benefit to all uses of the water resources. Poor water quality caused by upstream land use practices have the potential to adversely impact on all downstream users, including other farmers. The setting of the codes and guidelines also provides recognition that with public water allocations come the responsibility to use that water in a sustainable and efficient way.

Changing climate

30 The Position Paper proposes that surface water models be updated with more recent predictions of future climate. Given the length of time that has passed since the Tasmanian

[12] Section 14(2)(d) of the WM Act.
[13] Under Part 6 of the WM Act.
[14] Under Part 8 of the WM Act.
[15] See clauses 30.1, 30.2, 31.4, 32.1, 32.2, and 32.3 of the SPWQM.
[16] See clause 32.1 of the SPWQM.

Sustainable Yields project and the Climate Futures for Tasmania projects, EDO strongly supports this proposal.

31 We would also strongly encourage that modelling of future climate predictions inform:

(a) the Groundwater Risk Assessment and Management Framework project, so that changes in water use patterns resulting from climate change be factored into the determination of future Groundwater Areas under the *WM Act*;

(b) the identification of risks to the achievement of WQOs for waterways, and measures required to protect against the deterioration of water quality resulting from climate change; and

(c) the ongoing review of WMPs so as to account for future needs for ecosystems, and particularly aquatic/water dependent threatened species and communities, and genetic diversity in a changing climate.

32 All updated climate water modelling should be made publicly available to ensure transparency in water management decision-making.

33 We also consider that the WM Act should be amended to expressly require consideration of climate change in all statutory decision-making. Explicitly stating this intention in legislation, will ensure decision-makers act on the best available science. A clear statutory mandate provides for greater integrity in our water management system, and better protects all users of that system.

Understanding water use

34 As recognised in the Position Paper, competition for our water resources is expected to increase in coming decades. These challenges will be compounded by the effects of climate change.

35 Currently, most water users (whether they are drawing from surface or groundwaters) are not required to accurately measure their water take through the use of water meters. As already identified above at paragraph 21(c), in order to properly understand the status and health of our waterways, it is necessary for the Department to collect accurate data about water use. EDO therefore supports the proposal to "review water accountability and reporting frameworks to strengthen risk-based water use and water conveyance measurement and reporting."

36 We would anticipate that, at a minimum, one of the outcomes of that review would be to mandate water metering for the largest water users, such as aquaculture facilities and irrigators, with an eventual plan to roll out meters to all water users over a certain risk-based threshold.[17] The metering of the highest water users (at a minimum) is justified as their water usage places the most pressure on waterways and downstream users, and therefore poses the highest risk, and they derive the most private benefit from our water resources.

37 We also recommend that one of the outcomes of the proposed review be to provide a plan for the implementation of best practice water use reporting and enforcement of water allocations, taking account of learnings from other jurisdictions (particularly those within the Murray Darling Basin) about common problems with water meters and enforcement.

[17] This is consistent with Tasmania's commitment under clause 87 of the NWI.

38 Allocations and WMPs should be reviewed in light of measured water usage, and changes made to them in the event it is revealed that a particular catchment is overallocated.

III. Goal 2 Effective regulation, strong entitlements and planning

Allocation of water

39 One of the proposals outlined in the Position Paper is for the "review the water allocation policy framework to ensure it considers best available science in a changing climate, continues to deliver outcomes in line with the objectives of the WM Act, and enhances transparency of decision making."

40 As already identified in response to Goal 1 of the Position Paper, EDO considers that in order to properly understand whether the current framework is delivering on WM Act objectives, it is necessary for the Department to collect accurate data on surface flows and use, groundwater levels and use and water quality, and then report on catchment health taking account of WQOs. We consider that these reports should form the basis of any review of the water allocation framework with a particular focus on whether the water allocated to the environment is presently sufficient and will be sufficient under predicted worst-case climate change scenarios.

41 We agree with the observation on p 30 of the Position Paper that greater public access to information on water allocation limits and the volume of surface water remaining for allocation within catchments would allow a better understanding of the pressures facing catchments. We therefore support the proposal to "explore options to enable greater visibility of allocations and water availability in catchments "

42 However, particularly given the lack of robust scientific and quantifiable data about the current health of our waterways and levels of allocation, EDO does not support the proposal to "explore options to enhance flexibility for irrigators to manage allocations responsively" through, for example, annual rather than seasonal water allocations. Greater flexibility for irrigators should not come at the expense of the environment or downstream users. An approach consistent with the precautionary principle is warranted, particularly in the absence of sufficient information to assess the effectiveness of current or proposed allocation measures which forms part of the RMPS objectives of the Act.

Simplifying statutory water management planning

43 The Position Paper (at p32) outlines the process for the development of so-called of "water management statements" for "low-risk" catchments. As acknowledged by the Department, these statements are not recognised under the WM Act. As such, the particular processes for their development and associated community consultation are not mandated, and there are no requirements relating to their scope and objectives. Furthermore, these water management statements cannot legally guide allocation and other decision-making under the WM Act.

44 EDO supports the development of statutory WMPs for all catchments, irrespective of the complexity of water allocation, social or environmental management issues (or to use the language of the position paper, the perceived level of "risk" posed to those catchments). For so-called "low risk" catchments, we would expect that the level of detail required in the WMPs might, conceivably, be less. However, statutory WMPs are important as they guarantee a level of scientific rigour in the assessment of the waterway and community consultation that is essential to ensure the realisation of the RMPS objectives.

45 EDO is concerned that, currently, the majority of catchments (including the River Derwent catchment) are without statutory WMPs. Given the significant and increasing demands for water in these outstanding catchments, we urge the Government to commit to preparing WMPs, and delay any decisions for allocations to new irrigation schemes or other significant uses within those catchments until the WMPs have been finalised.

46 WMPs are a critical part of water management planning under the WM Act. They provide certainty for both users – irrigators and the like – and for the environment. The purpose of the WM Act is to regulate allocations, but to do so in a strategic, holistic, catchment-based way, while also ensuring that those allocations are provided in the context of clearly stated environmental objectives. A WMPs must contain:[18]

(a) a statement of the objectives of the plan, including the environmental objectives; and

(b) a description of the water regime that best gives effect to the environmental objectives and other relevant objectives of the plan; and

(c) an assessment of the ability of that water regime to achieve the environmental objectives and other relevant objectives of the plan; and

(d) an assessment of likely detrimental effects of the plan on the quality of water.

47 In the absence of a WMP for a catchment, there can be no confidence that water allocations – particularly substantive allocations with potentially long-term consequences – are being made in a manner that has sufficient regard to environmental outcomes.

48 EDO considers the proposal to "revise the legislative framework underpinning risk-based water management planning" is lacking in sufficient detail to enable informed comment.

49 The WM Act provides a strong basis for water management planning that is scientifically robust and can provide the desired certainty to water users and the environment. We consider that the WMP process outlined in the WM Act may be strengthened such that it is mandatory for:

(a) future climate change predictions be taken into account in their development and

(b) require emerging consumptive uses of water, such as hydrogen-electricity production and aquaculture (irrespective of whether their allocations come from Hydro Tasmania), to be subject to WMPs.

Otherwise, as the WMP process is currently framed in the WM Act, it is sufficiently robust to deal with arising issues. EDO considers that the real challenge appears to be in the resourcing of the Department to undertake the foundational work for the establishment of WMPs and review WMPs in a timely fashion.

50 The PC Report noted that WMP reviews are now overdue in Tasmania. Undertaking WMPs reviews is the most obvious "adaptive" mechanism to ensure that knowledge gained through monitoring, evaluation and research (including new climate change research) is used to improve management decisions. WMPs were never intended to be "set and forget" documents.

[18] Section 14(2) of the WM Act.

51 Therefore, EDO recommends that existing WMPs be reviewed and updated to include:[19]

(a) clear thresholds "trigger points" for flows and water quality to allow for the reallocation of water where required due to changing climatic conditions;

(b) a clearer assignment of risk given any projected future declines in water available for allocation.

52 In line with PC Report recommendations (from p 95 of the PC Report), EDO also supports a renewed focus on setting water quality and environmental objectives in WMPs, facilitated by the setting of WQO under the SPWQM, and greater recognition of palawa / Tasmanian Aboriginal values in these documents (we provide further comment on this below).

53 In summary, while EDO supports a review of the statutory WMP framework to ensure that it is meeting best practice – especially in terms of community consultation, recognition of palawa / Tasmanian Aboriginal values, and the use of underpinning science including climate change modelling – we also consider that preparing WMPs for catchments without them and reviewing existing WMPs should be a priority under the RWUS.

54 We also should note that there is a concurrent review of the Tasmanian Planning Commission underway. In order to provide for the continued involvement of the public, we recommend that the Commission retain its current function of reviewing submissions on WMPs and holding public hearings under s27 of the WM Act.

Local involvement in water management

55 The Position Paper proposes to "ensure that Indigenous people have the opportunity to be engaged in water planning in Tasmania".

56 EDO makes the following comments on this proposal in the context of being lawyers with experience and expertise in environmental and planning law. We acknowledge that we do not speak on behalf of palawa / Aboriginal people in Tasmania.

57 When the NWI was signed in 2004, Tasmania agreed to inter alia:

> *52….provide for indigenous access to water resources… through planning processes that ensure:*
>
> *i) inclusion of indigenous representation in water planning wherever possible; and*
>
> *ii) water plans will incorporate indigenous social, spiritual and customary objectives and strategies for achieving these objectives wherever they can be developed.*

58 Currently no WMPs in Tasmania provide for "indigenous social, spiritual and customary objectives and strategies for achieving these objectives" as required under the NWI.[20]

59 The Department's updated *Water Management Planning Guiding Principles for the Development of Statutory Water Management Plans in Tasmania* (2018) now state the Department will at a minimum consider the "Aboriginal heritage values" and "spiritual, cultural and recreational values" of a water resource in developing WMP objectives. It also

[19] See PC Report at p92.

[20] The River Clyde Catchment WMP does mention and acknowledge the palawa / Tasmanian Aboriginal people as the traditional owners of the area and their continuing connection to it. However, no explicit objectives or measures are set to protect the acknowledge significance and cultural heritage values within the catchment.

states that the Department will "contact the Tasmanian Aboriginal community to seek its interest in being involved in the water management planning process" and undertake an assessment to identify "cultural and historic and Aboriginal heritage values and where possible, water regime requirements".

60 EDO is supportive of these steps towards better acknowledgement and inclusion of palawa / Tasmanian Aboriginal people into the water management planning process, however we note that palawa / Tasmanian Aboriginal values of waterways may extend beyond "cultural and historic" values to commercial (or consumptive uses) of water.[21] These need to also be recognised and provided for under WMPs and the statutory framework.

61 In addition to these commitments, the Tasmanian government's approach to water management and planning should be consistent with the principles of the *UN Declaration on the Rights of Indigenous Peoples* including by incorporating the principles of free prior and informed consent of Aboriginal people in decisions affecting their culture, and provide for necessary changes to the WM Act to facilitate this with respect to authorisations granted under the WM Act.

62 Currently, the *Aboriginal Heritage Act 1975* does not address water management decisions and impacts on country and culture. While we recognise that there is also a substantive review of that seriously outdated Act on foot, there is no reason to wait the outcome of the review to ensure that the Rural Water Use Strategy and any subsequent amendments to the WM Act be informed by Tasmania's palawa / Aboriginal people, particularly as there are no current obvious linkages between decisions under the WM Act and permit requirements under the AH Act.

63 EDO is also supportive of the proposals providing for active community involvement in water management decision-making, providing that is within the ambit of existing WMPs and the broader legislative framework. We note that the Department's facilitation of such informal groups should not be considered to be a replacement to the formal modes of public participation in the WM Act, and in particular, in the WMP process, or be used as a substitute for its important regulatory function. We recommend that if these groups are to be more generally facilitated and recognised by the Department, then WMPs should set a framework for local water user groups for particular catchments.

Water trading

64 The currently informal nature of many trades in water in Tasmania may have an adverse impact on how it is valued, and therefore the efficiency of its use. EDO therefore supports the proposals to:

(a) review policy settings for water trading; and

(b) consider legislative and administrative reforms as well as information systems to provide relevant information and register water trades to better support water market development.

These proposals are in line with the PC Report recommendations (at pp 30 and 111) for the states to increase transparency and access to information about water trade.

[21] See PC Report at Box 3.10 at p 99, see Chapter 8 of the Australian Human Right Commission Native Title Report 2008 entitled "Indigenous Peoples and Water".

Dams for irrigation uses

65 The EDO does not have a view on the engineering methodology adopted under the WM Act for the certification of dam safety. However, we would encourage any proposal to review the ANCOLD certification for smaller private dams to particularly consider whether the proposed replacement standards adequately factor in risks to small dams arising from climate change into their processes.

66 The Position Paper proposal to "work with industry and the Local Government Association of Tasmania to enhance the knowledge and understanding of the potential for downstream developments to cause changes to upstream dam risk ratings and to ensure that these potential changes are adequately considered in the planning process for new developments" emphasises the current disconnect between land use planning and the water management systems.

67 EDO agrees that dams must be managed in a way that ensures their adequate safety regardless of the origin of any increased risk. We further consider that dam approvals, where they are likely to have implications for land use decision-making by planning authorities, communities and investors, should form part of strategic land use planning. That is, if land use planning is required to take into account risk ratings of upstream dams in land use planning decisions, there should be a reciprocal consideration of downstream uses in water management planning decisions for the approval of such dams. For instance, this could be implemented through an opportunity under the incoming Tasmanian Planning Scheme for planning authorities to regulate the use to which water held in such dams is put (as these may have significant downstream consequences, for instance, on water quality arising from increased sedimentation or agricultural run-off). If the issue is one of safety, dams have the potential to undermine strategic land use plans developed over many years, in the absence of this level of integration.

68 EDO notes the concerns of stakeholders relating to catchment dams. Such concerns are acknowledged in clauses 55 and 56 of NWI, which relevantly provide:

> 55. The Parties recognise that a number of land use change activities have potential to intercept significant volumes of surface and/or ground water now and in the future. Examples of such activities that are of concern, many of which are currently undertaken without a water access entitlement, include:
> i. farm dams and bores;
> ii. intercepting and storing of overland flows; and
> iii. large-scale plantation forestry.
>
> 56. The Parties also recognise that if these activities are not subject to some form of planning and regulation, they present a risk to the future integrity of water access entitlements and the achievement of environmental objectives for water systems. The intention is therefore to assess the significance of such activities on catchments and aquifers, based on an understanding of the total water cycle, the economic and environmental costs and benefits of the activities of concern, and to apply appropriate planning, management and/or regulatory measures where necessary to protect the integrity of the water access entitlements system and the achievement of environmental objectives

69 While overland flow catchment dams may currently be "relatively few" in Tasmania, with increasing competition for freshwater and water trading, they may easily proliferate to such a point that their cumulative impacts on water availability to downstream uses and the environment are significant.

70 To address the valid concerns held by stakeholders about catchment dams, we recommend (in accordance with cl. 57 of the NWI) that the WM Act is amended so that dams that are designed catch overland flow over a certain threshold identified under WMPs (or otherwise a default amount set under the Act) require a water allocation and licence.

71 In line with previous submissions we have made in relation to the reform of the WM Act and management of freshwater resources, we recommend that the WM Act be amended to allow for substantive third part appeal rights (i.e. appeal rights that allow the raising of more than just procedural grounds of appeal) in relation to dam approvals.[22] In our experience, providing the opportunity for formal public participation including appeal rights will ensure transparency and accountability, increase community confidence in decision-making and overall improve the quality and consistency of water management decision-making.

IV. Goal 3 - Strategic development to maximise opportunities from freshwater resources

Irrigation Infrastructure Development

72 We note the stakeholders' views expressed in 3.1.2 of the Position Paper clearly indicate a desire for land use planning and water management planning to be better integrated such that land suitable for irrigation is strategically identified and allocated under land use planning schemes that take account of "the social and environmental requirements and expectations of the community".

73 Although the Position Paper states that the process for the identification of land suitable irrigation is outside the scope of the Rural Water Use Strategy project, EDO believes that consideration of such issues is essential for a balanced and well-received RWUS. Consideration of these issues is also required when taking into account the Department's obligation to give effect to the RMPS objectives and implement the SPWQM.

74 The Position Paper outlines the government's commitment to deliver the "third tranche" of "Pipeline to Prosperity Program" irrigation projects amount to the delivery of an extra 80,000ML of water in addition to the existing 130,000ML of water already used for irrigation in Tasmania. The paper notes that 75% the funding for these projects will be public funded.

75 EDO's support the Position Paper proposal to "continue to progress Tranche 3 of irrigation scheme development in partnership with investment from irrigators and the Australian Government" is predicated on our recommendations in the following paragraphs being adopted.

76 Under clause 69 of the NWI, Tasmania agreed to ensure that proposals for investment in new or refurbished water infrastructure, such as irrigation infrastructure "be assessed as economically viable and ecologically sustainable prior to the investment occurring". The PC Report noted (at p 266) that most states, including Tasmania, have failed to implement this commitment with respect to irrigation proposals. Notwithstanding, the PC Report recommended (at p 23) that an independent, triple bottom line analysis of all new irrigation proposals be undertaken *before* the expenditure of any public funds on it. It appears that no such assessments have been undertaken or publicly released in relation to the Pipeline to Prosperity Program in Tasmania. It is imperative that government honour its NWI commitments and undertake these assessments prior to the commencement of any funding

[22] This may involve the amendment or repeal of section 276(4) of the WM Act.

decisions for the proposed infrastructure. That this assessment is undertaken is our strong recommendation.

77 The NWI further requires that all water provided through publicly funded irrigation schemes be appropriately priced to ensure efficient allocation and that the community is not left with the costs of so-called "externalities".[23] These "externalities" include reduction in water quality associated with land use changes arising from irrigation (e.g. through land clearing, intensification of cropping or dairy production, reduction in water flows), flow reduction, and increasing soil salinity. We consider there is merit to the PC Report recommendation (at p180) that the Office of the Tasmanian Economic Regulator (OTTER) should have a role in water pricing in Tasmania. We would further recommend that OTTER's role in scheme pricing be reflected in legislation, and include oversight of whether water provided under irrigation schemes is priced so as to ensure its most efficient and environmentally sustainable use (taking account of the range of economic, social and ecological values provided by that watercourse).[24]

78 In accordance with recommendation 8.1 of the PC Report, EDO also recommends that potential irrigators be required to make upfront contributions to any proposed scheme so as to avoid the construction of expensive white elephants and entrench inefficient and unsustainable water use.

79 As previously stated, EDO calls on the Government to develop and/or review WMPs in all catchments where new irrigation proposals are being considered. No allocation of water to these schemes should occur until these WMPs are in effect or updated.

Battery of the Nation

80 The Position Paper proposes to "ensure that the legislative framework under which Hydro Tasmania's water rights and obligations sit provides certainty and confidence for proposals such as Battery of the Nation".

81 It is our understanding the Hydro Tasmania has a special water licence under the WM Act, for the non-consumptive use of hydro-electricity generation, and that it is able to transfer water under that allocation to consumptive uses, such as irrigation or aquaculture. However, this ability does not appear to be codified in legislation, nor is it clear as to what limits there are on the ability of Hydro Tasmania to transfer that water. Further, it is our understanding from the provisions of the WM Act that the transfer of water by Hydro Tasmania to consumptive use is not subject to usual WM Act approval processes,[25] or within the ambit of WMPs.[26] The consequence of this transfer outside of the usual processes of the WM Act means there is a very real possibility that such transfers can have unintended economic, social and environmental impacts. Finally, as there are no statutory requirements to be met for Hydro Tasmania to make any such allocations, we would question whether these decisions are being made consistent with the NWI or the objectives of the WM Act.

82 For these reasons, EDO recommends that there is a need to provide transparency and oversight to Hydro Tasmania's powers to transfer water to consumptive use, and that any

[23] See clauses 65 and 73 of the NWI

[24] Refer to our discussion on water valuations from paragraph 10 of this submission.

[25] Without access to the special licence(s) issued to Hydro Tasmania under the WM Act, it is difficult to understand the restrictions on its power to transfer water for consumptive uses – see section 121 (1) of the WM Act.

[26] See sections 108 and 112 of the WM Act which give primacy to special licences over WMPs.

such transfer should be subject to the ordinary processes of the WM Act. It is our recommendation that the government commission an independent review of Hydro Tasmania's role in water management with the aim of identifying:

(a) Hydro Tasmania's legal rights and obligations with respect to water management;

(b) whether those rights and obligations are consistent with the NWI and objectives of the WM Act; and

(c) what legislative reform may be required to ensure any barriers to the implementation of NWI commitments and objectives of the WM Act presented by Hydro Tasmania's water rights and obligations are removed.

Water recycling and reuse

83 While EDO agrees with the proposal to "support ongoing development of policies to encourage water recycling and reuse", we consider that these policies should prioritise and protect downstream users, groundwater systems and the environment from pollution or degradation.

84 Increasingly, wastewater from aquaculture and wastewater treatment facilities is being used for irrigation. While the EPA has a set of existing policies, at least with respect to wastewater treatment plant water reuse, EDO considers that much more should be done to protect water quality, and those actions we identified in paragraphs 24 to 29 of this submission should be adopted as part of the RWUS.

Emerging water dependent industries

85 The Position Paper has highlighted the government's support for the development of a "renewable hydrogen energy industry" in Tasmania. It then proposes to "investigate options to provide strategic whole of government oversight to emerging new water developments".

86 While we question whether hydrogen energy production is most appropriately described as a "rural water use", EDO is supportive of any water allocations to new and emerging industries being subject to the same requirements under the WM Act and incorporated into (and being subject to) statutory WMPs.

V. Goal 4 - Administrative efficiency

Water management information systems

87 EDO is supportive of all proposals in the Position Paper relating to the improvement of water management information systems and the increase in public access to existing and emerging water data. We consider that it is vital that water data be both available, but also analysed and reported on to ensure the achievement of WM Act objectives.

Water legislation amendments and review of internal processes and practices

88 While EDO generally supports the notion of enhancements to the efficiency, consistency and effectiveness of the water management framework, as we have previously noted in this submission, proposals for legislative reform in the Position Paper are lacking in sufficient detail to enable detailed comment.

89 EDO considers that any amendments to the WM Act arising from the RWUS should:

(a) strengthen public participation in the development of statutory WMPs, and third part appeal rights in dam works permits;

(b) provide clear statutory requirements to ensure WMPs and allocations consider climate change;

(c) strengthen mechanisms for the achievement of sustainable environmental outcomes;

(d) provide a default threshold for licence and water allocations for dams designed catch overland flow

We also recommend that full consultation be undertaken with the palawa / Tasmanian Aboriginal community to determine what changes, if any, are required under water management framework to facilitate proper recognition of their social, spiritual and customary connection to Tasmania's waterways.

Water Management Fees

90 EDO supports the proposal for the detailed review of water management fees following any changes arising from the RWUS, and encourages the Department to undertake the broader investigation of the feasibility of full cost recovery of the private benefits associated with water management that was flagged in the *Regulatory Impact Statement for the Water Management Regulations 2019*.

91 We note that such an approach is consistent with clause 64(iv) of the NWI, under which Tasmania committed to inter alia giving effect to the principles of "user-pays", "pricing transparency for water storage and delivery in irrigation systems", and "cost recovery for water planning and management".